ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Services Inside Wiring	)	CS Docket No. 95-184
	)	
	)	
Customer Premises Equipment	)	
	)	

COMMENTS OF TIME WARNER CABLE
AND TIME WARNER COMMUNICATIONS

TIME WARNER CABLE
TIME WARNER COMMUNICATIONS

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SUMMARY

- **It is premature to adopt "harmonized" regulations based on speculation relating to the possibility of eventual "convergence."**

The Commission must continue to recognize the substantial differences, both technical and practical, between narrowband telephone and broadband video technology. It is simply too early to predict whether "convergence" of telephone and cable service will occur, and especially what form it may take. Therefore, the Commission must not adopt premature "harmonized" regulations which stifle innovation, rather than promote competition, by preordaining a particular provider or technology as the service of the future.

- **Any change in the MDU demarcation point for broadband facilities would contravene express Congressional directives.**
  - -- In the 1992 Cable Act, Congress directed the FCC to establish the broadband demarcation point where the wiring enters "the interior premises of a subscriber's dwelling unit."
  - -- The 1996 Telecommunications Act reaffirms that cable operators must be allowed to retain ownership and control of broadband wiring extending "from the last multi-user terminal to the premises of the end-user."
  - -- The anti-buyout provisions of the 1996 Telecommunications Act also direct the Commission to adopt policies which promote facilities-based competition rather than allow a competitor to take over facilities installed by an existing provider.

Congress has now spoken forcefully and unambiguously on the point of demarcation issue not once, but twice. Only by maintaining the current broadband point of demarcation for MDUs can the Commission faithfully implement the will of Congress.

- **The Commission's current point of demarcation rules are the most effective to encourage facilities-based competition.**

The Commission's present point of demarcation rules for both telephone and cable television installation best promote competition and consumer choice. The current rules ensure that consumers have ready access to both broadband and narrowband internal wiring, promoting competition and empowering consumers to choose among all available telecommunications service providers to obtain their particular optimal mix of services.

In the single-family home context, cable and telephone inside wiring rules can easily be reconciled through adoption of a flexible point of demarcation located at or about 12 inches on either side of the point where wiring enters the home. In the MDU context, however, due to the presence of building owners who have the power to act as bottlenecks, the Commission must maintain separate points of demarcation. Such separate points of demarcation should not be based on the particular service provided, as in the current rules, but instead should be based on the technology, broadband vs. narrowband, over which the service is delivered to the consumer. Relocating the broadband point of demarcation to a point far distant from the premises of each unit in MDUs would stifle competition and cripple cable operators' ability to compete with incumbent telcos in the entire range of service offerings. Maintaining the current demarcation point is a fair, workable approach that best guarantees consumers access to competing facilities-based service providers.

It would be no solution for the Commission to adopt rule changes that effectively turn over existing MDU wiring installed and owned by incumbent cable operators to competitors simply for the "replacement cost" of such wiring. Nothing in the 1992 Cable Act or the Telecommunications Act of 1996 gives the Commission the authority to force cable operators

to sell their broadband plant to competitors. In addition, such a forced sale removes the possibility for simultaneous competition among facilities-based broadband providers, and eliminates the cable operator's ability to compete with incumbent telcos in the provision of new services, including video, voice, and data transmission. If a competitor is willing to pay the replacement cost of the wiring, then it should be willing to invest an identical amount to construct its own competing broadband facilities, thereby affording consumers the benefits of facilities-based competition.

In recognition of the fact that the traditional distinctions between service providers (cable operator vs. telephone company) are beginning to blur, maintaining separate demarcation points based on the nature of the service will likewise begin to lack coherency. Thus, distinctions in the Commission's inside wiring rules should be based on whether broadband vs. narrowband technology is being used to deliver service, and should apply to all service providers equally.

- **Congress mandated the Commission not to force cable operators to cede control over inside broadband wiring prior to termination of service.**

The Commission should not expand its home wiring rules to apply prior to subscriber termination of service. To do so would contradict the plain language of the home wiring statute as enacted by the 1992 Cable Act. If the Commission decides that cable operators should cede control over inside wiring to consumers, the best approach is for the Commission to create incentives for cable operators to do so voluntarily. Such incentives should include elimination of price regulation of inside wiring installation and maintenance, as well as recognition that signal quality and other technical standards can only logically apply to broadband facilities which remain under the control of the cable operator.

- **The Commission should refrain from adopting standards applicable to jacks and connectors.**

The presence of a de facto standard within the video delivery industry demonstrates the absence of any need for government intervention in setting standards for jacks and connectors. The adoption of standards is unlikely to substantially further the goals which the Commission cites as justifying such standards, and would end up stifling technical innovations and equipment improvements to the detriment of the public.

- **The Commission should make its signal leakage and signal quality rules applicable to all broadband service providers.**

The Commission's rules governing signal leakage and operation in certain safety of life frequency bands apply only to cable television systems because at the time they were adopted there were no other pervasive providers of broadband communications services. Increased competition in broadband services requires the Commission to reexamine its policy and extend its signal leakage rules to make them applicable to all broadband providers. Coaxial cable distribution facilities associated with any broadband service can be a significant source of signal leakage. Regardless of the nature of services carried over a broadband facility, the threat to public safety and air navigation from leakage remains the same.

The existence of competition among various broadband service providers will render government-mandated signal quality standards unnecessary. However, to the extent that the Commission decides to retain signal quality standards, those standards should be made applicable to all broadband service providers. If such rules are necessary to ensure adequate signal quality from cable operators, such rules should ensure that the same signal quality is received from competing video service providers, whether wire-based or wireless.

- **The network architectures and services provided by cable systems and telephone companies differ in many critical respects, and warrant differing regulatory treatment with regard to classification of equipment as CPE.**

To the extent the Commission desires to apply a telephone-like regulatory model to the cable industry, it must ensure that only equipment which is directly analogous to telephone CPE be regulated as cable CPE. Accordingly, the Commission must recognize that cable terminal equipment which provides switching and security functions in a distributed broadband switched network should not be classified as CPE, but rather is analogous to the telephone switch located at the central office. The equipment comparable to the telephone in cable's distribution to the home is the television set itself, on which the consumer simply activates the power to receive the TV signal, just as the telephone receiver is picked up to answer a phone call.

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COMMENTS OF TIME WARNER CABLE AND TIME WARNER COMMUNICATIONS

Time Warner Cable and Time Warner Communications (collectively "Time Warner") hereby respectfully submit these comments in response to the above captioned Notice of Proposed Rulemaking released by the Federal Communications Commission ("Commission") on January 26, 1996.[1/] Time Warner Cable, a division of Time Warner Entertainment Company, L.P., owns and operates cable television systems across the nation. Time Warner Communications, an affiliate of Time Warner Cable, provides telephone and other telecommunications and information services in various communities. As such, Time Warner is directly interested in the proposals set forth in the Commission's NPRM as they might affect both cable television and telephone operations.

[1/] Telecommunications Services Inside Wiring, Customer Premises Equipment, Notice of Proposed Rulemaking, CS Docket No. 95-184, FCC 95-504, ___ FCC Rcd ____ (rel. Jan. 26, 1996) ("NPRM").

I. INTRODUCTION

It is premature to adopt "harmonized" regulations based on speculation relating to the possibility of eventual "convergence" of wire-based distribution technologies capable of simultaneous delivery of video, voice and data communications. Many telephone companies are constructing stand-alone, broadband video distribution systems alongside their existing narrowband telephone facilities. There is no evidence that telephone companies will abandon their narrowband telephone networks any time soon. For the foreseeable future, twisted pair telephone lines are likely to be used to terminate voice traffic within the subscriber's premises, even if video and voice are delivered to the home on a single broadband facility. Commission regulations must recognize the continued substantial distinctions between narrowband telephone and broadband cable television technology. The Commission should foster marketplace innovation rather than adopt premature regulations which preordain a particular architecture or technology.

II. THE COMMISSION'S CURRENT POINT OF DEMARCATION RULES ARE MOST EFFECTIVE TO ENCOURAGE FACILITIES-BASED COMPETITION

In the NPRM, the Commission recognized the existing differences between the rules for cable and telephone inside wiring demarcation points,[2/] and asked commenters whether the two should be harmonized or otherwise changed to better promote competition in the

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[2/]See, e.g., In the Matter of Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, Report and Order and Further Notice of Proposed Rulemaking, CC Docket 88-57, 5 FCC Rcd 4686 (1990); In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, First Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket 92-260, 8 FCC Rcd 1435 (1993).

provision of telecommunications services.[3/] Time Warner concurs with the Commission's goal of reevaluating its demarcation point rules in an effort to maximize competition and consumer choice. In so doing, Time Warner urges the Commission to follow certain overriding principles:

- The Commission's rules should not require any information service provider to cede ownership of any portion of its distribution infrastructure which is necessary to reach ultimate end users/consumers.

- The Commission's rules should be designed to allow consumers to make seamless transitions between competing providers without foreclosing the opportunity for consumers to receive selected services from multiple providers simultaneously.

- The Commission's rules should encourage facilities-based competition with multiple pipelines into the home, rather than a single pipeline whereby the only option is to replace one sole provider with another sole provider.

- The Commission's rules should promote competition, not provide special advantages to specific competitors, nascent or otherwise. Thus, for example, just because a competitor is a new entrant, this does not justify providing such competitor with a "free ride" on the infrastructure which has been constructed and financed by the incumbent.

- The Commission should not slavishly apply the telephone inside wiring rules to cable home wiring given the substantial differences in the technological and competitive issues.

- The Commission should not prematurely adopt a "one size fits all" approach to wiring used for both video and voice because such an approach would constitute an "industrial policy" which picks technological winners and losers.

- The Commission should not adopt home wiring rules which allow landlords, building owners or other third parties to seize *de facto* control over internal wiring in multiple dwelling unit ("MDU") buildings, thereby assuming the role of a gatekeeper who can dictate the provider of telephone or cable service to MDU occupants.

[3/]NPRM at ¶¶ 6-11.

The Commission's present point of demarcation rules for both telephone and cable television installations to serve single family homes, with minor adjustments, will satisfy each of the foregoing goals. Because the ultimate end user has ready access to both broadband and narrowband internal wiring used to distribute communications services within the single family home, the consumer is empowered to choose among all available service providers, and even to obtain various services from multiple providers (e.g., a telephone company and a cable television company) simultaneously.

In the MDU context, however, the entrenched monopoly telephone companies have suggested a dramatic change in the current pro-competitive demarcation point for broadband installations. They are advocating moving the MDU demarcation point far outside the dwelling units of individual end users. Such a rule would allow telephone companies to protect and expand their monopolies in MDU buildings by seizing facilities from cable operators which are essential to the ability to compete with such telephone companies. Moreover, such an alteration to the MDU demarcation point would have the practical effect of giving greater power to landlords and building owners to dictate the communications provider within MDU buildings, rather than allowing consumers to make their own choices and reap the benefits of competition. Only by retaining the Commission's current broadband demarcation point will MDU residents have similar ability to choose service providers as is available to single family homeowners.

A. The point of demarcation rules for single family home installations can be easily reconciled.

Time Warner submits that the Commission's rules governing cable and telephone inside wiring in single family homes can be readily harmonized. Time Warner foresees a

future in which the majority of single family homes are able to receive a multitude of telecommunications services, both multichannel video programming and telephony, over competing broadband distribution facilities. At the same time, narrowband telephone wires will continue to offer significant competitive choices to consumers. Moreover, choices of services delivered to the home by wireless technologies, such as cellular, PCS, DBS and wireless cable, are bound to proliferate. However, even many of these wireless services will have to be delivered over inside wiring once they reach the consumer's home.

In the single family home context, there is little reason to maintain separate demarcation points for different services provided over broadband vs. narrowband wires. Consumers should be able to make seamless transitions among service providers by simply connecting inside wiring to the alternative provider's distribution network at a readily accessible demarcation point. If a consumer desires multiple services from multiple providers, this can easily be accommodated at the single demarcation point.

Accordingly, Time Warner submits that whenever possible, the demarcation points for all telecommunications services in the single family context should be proximately located. Cable and telephone rules can be easily reconciled by providing for a uniform telecommunications demarcation point at or about 12 inches on either side of the point where either broadband or narrowband wiring enters the home. Competing providers would then have every incentive to co-locate their respective network interface devices, thus allowing for expedient and seamless service transitions. Such a solution would not be a disruptive departure from the current telephone or cable inside wiring rules, and would promote competition by facilitating customer changes between different telecommunications providers based on the customer's choice.

B. The Commission should retain its current point of demarcation for broadband distribution facilities in MDUs.

1. The current broadband point of demarcation in MDUs best promotes facilities-based competition.

The Commission's NPRM seeks comment on "whether and how our wiring rules can be structured to promote competition both in the markets for multichannel video programming delivery and in the market for telephony and advanced telecommunications services."[4/] In particular, the NPRM seems inclined to adopt the proposal widely endorsed by incumbent telephone companies to move the MDU point of demarcation to the point at which the broadband wire "becomes dedicated to an individual subscriber's use." As shall be demonstrated below, any movement of the broadband point of demarcation to a point not directly adjacent to the premises of each individual MDU resident would stifle, rather than promote, "the development of advanced telecommunications services and competition for those services."[5/]

In order to fully appreciate the competitive implications of any proposed change in the broadband point of demarcation in MDUs, it is necessary to understand the basic types of broadband distribution architecture typically employed in MDU buildings. MDU broadband distribution architecture can generally be categorized as either "homerun" or "loop-through." Loop-through and related series configurations are discussed in response to the Commission's Further Notice of Proposed Rulemaking in MM Docket No. 92-260. In a homerun configuration, the broadband distribution cable enters the MDU building and then is typically distributed to each floor through vertical "risers." See Exhibit A. The riser cable typically

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[4/]NPRM at ¶ 14.

[5/]Id.

carries signal to numerous locations throughout the building, and thus any break in the riser could interfere with the ability to provide service to customers located "downstream," just as in the case of loop-through or series configurations. Moreover, the risers often are equipped with amplifiers to ensure that a proper signal level is maintained throughout the MDU. It is not seriously contended by any party that any portion of the riser be turned over to a competitor, even after termination of service by one or more subscribers.

At various points within the MDU building, the riser in a homerun configuration enters a distribution box, which is often located in the stairwell, and which is commonly referred to as a "lockbox." See Exhibit B. From the lockbox, a cable is installed through the common areas of the building (pop-open moldings in hallways,[6] conduits running through the walls or floors, etc.) to the premises of each MDU resident on the floor or floors served from that lockbox. See Exhibit C. It is this cable extending from the lockbox to the resident's premises which is often referred to as the "homerun." The riser cable then carries the signal on to the next lockbox, often located on another floor. The "homerun" is a critical element of a cable operator's broadband distribution network. If the cable operator is deprived of use of the homerun, it is impossible to deliver signals to the dwelling unit or units at the end of that homerun.

Consistent with the unambiguous Congressional policies embodied in the Telecommunications Act of 1996, the Commission's current MDU point of demarcation for broadband facilities promotes facilities-based competition, because each competitor is

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[6] As part of their distribution network installed in MDUs, cable operators often install plastic moldings which can be opened to gain access to the wiring, splitters and taps installed inside. Such moldings are just as much a part of a cable operator's plant as are the pedestals installed to house splitters, taps and other cable facilities in an exterior installation.

required to construct and maintain an independent internal broadband distribution infrastructure in the MDU building, including a separate set of homeruns to each unit installed by each competing provider. This policy enhances consumer choice, because MDU residents have absolute freedom to select among multiple services offered by competing providers simultaneously. Moving the point of demarcation in MDUs to the lockbox or some other point not readily accessible to individual MDU residents would preclude competition, because only one broadband provider could deliver services to an MDU resident at any given time. In particular, the change in the demarcation point definition advocated by the incumbent telephone interests would make it impossible for Time Warner or other cable operators to compete with an existing telephone company serving that MDU, because the cable operator needs to retain its internal broadband distribution infrastructure in the MDU building so that voice, video and data transmissions can be delivered to each MDU resident. It is not surprising, then, that the incumbent telcos are vocal advocates of a radical change in the broadband demarcation point so they can snuff out telephone competition in MDUs just as such competition is becoming legally and technically possible.

MDU buildings currently contain at least two sets of communications distribution facilities: narrowband telephone wires and broadband cable television wires. As explained above, Congress has directed the Commission to adopt policies which will promote even more wires reaching consumers. Any suggestion that a cable operator cede ownership of the homerun, a critical portion of its distribution network, would result in fewer wires reaching consumers, directly contrary to Congress' mandate.

In order to reach a proper resolution of the issues in this proceeding, it is essential for the Commission to discard the antiquated, one-wire, monopoly provider approach which has

permeated communications policy in the past. The Commission must embrace the policies espoused by Congress in the Telecommunications Act of 1996 which are designed to allow competition to flourish. Applying traditional thinking, it may be hard to imagine why a consumer would want to obtain services simultaneously from two competing video programming distributors ("MVPDs"). But in the dawning era of facilities-based competition, such scenarios are easy to imagine. For example, a consumer may be satisfied with the price and quality of "plain old telephone service" provided by the incumbent telco, but may desire a high-speed computer connection for Internet access, which may only be available from the cable operator's broadband plant. Similarly, a consumer may want to obtain basic cable service from the incumbent cable operator, while obtaining satellite programming services from a competing provider, such as DBS, SMATV or wireless cable. Such a scenario is particularly plausible in light of the fact that DBS providers are unable to deliver the local television broadcast signals provided on a cable operator's basic tier, often at subsidized, below-market rates. Finally, a subscriber may decide to discontinue cable service from the incumbent provider in favor of a competing MVPD, such as a telephone company or SMATV service. Nevertheless, such a consumer may wish to obtain competitive telephone service from the former cable company, or the consumer may wish the option to order unique pay-per-view events (e.g., championship boxing) which might be available only from the former cable service provider.

Such benefits are readily available to residents of both single family homes and MDUs under the Commission's current point of demarcation rules. If the point of demarcation in MDUs is moved, however, competitors will be able to seize a critical portion of the cable operator's internal distribution infrastructure (i.e., the homeruns), the cable

operator will no longer be in a position to deliver services to affected MDU residents, and competition will be foreclosed. Where a cable operator is forced to relinquish its broadband homerun cables to the local telephone company, then the telco would control both the broadband and narrowband facilities in the MDU, shielding itself from both wireline telephone and video competitors. The Commission must reject this patently anticompetitive approach advocated by incumbent telcos.

As Congress has recognized, cable operators are the best hope for facilities-based competition to incumbent telcos because existing cable infrastructure is adaptable to the provision of telecommunications service.[7/] If cable operators are precluded from continued use of a crucial portion of this infrastructure, their ability to raise the significant capital necessary to compete with telcos will obviously be impaired. The Commission should retain its existing demarcation point for broadband facilities in MDUs, thereby ensuring that each broadband competitor will construct facilities capable of delivering a multiplicity of services to each resident simultaneously, and thereby allowing MDU occupants to share the same advantages of facilities-based competition available to single-family home occupants.

As noted above, certain incumbent telcos and other parties have advocated establishing the point of demarcation in MDUs where the broadband wire "becomes

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[7/]As noted by the legislative history of the Telecommunications Act of 1996:

> ...meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated.

H.R. Rep. No. 104-458, 104th Cong. 2d Sess. (1996) at 148.

dedicated to an individual subscriber's use." Even under such a definition, the point of demarcation would remain at the point where the wiring enters each individual unit. The "homerun" cable is never "dedicated" to an individual subscriber's use. First, as explained above, even after a customer discontinues cable service, the cable operator must retain its entire end-to-end distribution system in place, including the homeruns, so that other services can be marketed and delivered to that unit, such as pay-per-view, Internet access or telephone service. Second, a homerun often serves two or more units in an MDU through splitters. Finally, even a homerun which has been formally used to serve a single unit might be redirected to serve another unit if the original subscriber discontinues service. Thus, the only wiring which a cable operator truly "dedicates" to an individual subscriber's use is wiring installed within the premises of each unit. Homeruns are part of a cable system's distribution infrastructure -- they are not "dedicated" to individual subscribers.

2. A change in the MDU demarcation point for broadband facilities would contravene express Congressional directives.

a. Changing the MDU broadband demarcation point would violate the 1992 Cable Act.

Under current FCC rules, the broadband point of demarcation in MDU buildings cannot be located more than about twelve inches outside the MDU resident's individual dwelling unit. Proposals to move the point of demarcation far outside the dwelling unit, for example, to a lockbox often located hundreds of feet away, are flatly inconsistent with the 1992 Cable Act.

Section 16(d) of the 1992 Cable Act specifically states that the home wiring rules are to apply to "cable installed by the cable operator within the premises of [the] subscriber."[8/] Any proposal to move the broadband point of demarcation in MDUs to a point far outside the premises of each tenant would be flatly inconsistent with the plain statutory language. Moreover, Congress has elaborated that Section 16(d) "limits the right to acquire home wiring to the cable installed within the interior premises of a subscriber's dwelling unit,"[9/] and that it does not apply to "any wiring, equipment or property located outside of the home or dwelling unit."[10/] Specifically addressing the situation in MDUs, Congress has clearly determined that the point of demarcation must be established so as to apply only to "wiring within the dwelling unit of individual subscirbers," and not to any wiring or facilities, such as the risers, amplifiers and homeruns, located in the common areas of MDU buildings.[11/] Extending the broadband point of demarcation to a point far outside the resident's dwelling unit is well beyond the scope of authority given to the Commission in Section 16(d) of the 1992 Cable Act.

[8/]47 U.S.C. § 544(i) (1992) (emphasis added).

[9/]H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992) ("House Report") (emphasis added).

[10/]Id. at 118-119.

[11/]Id. at 119.

b. Changing the MDU broadband demarcation point would contravene the anti-buyout provisions of the Telecommunications Act of 1996.

The anti-buyout provisions of the Telecommunications Act of 1996, contained in Section 302,[12/] are designed to ensure that consumers are given at least two options to obtain services from competing wire-based, broadband facilities.[13/] By forcing the local exchange carriers to build their own broadband distribution networks if they want to compete with existing cable operators, the anti-buyout provisions ensure that consumers will truly enjoy a choice between at least two entirely separate competing broadband networks. If incumbent telephone companies desire to compete with cable operators for the delivery of broadband service, these provisions are designed to require construction of overlapping broadband distribution networks. By generally prohibiting buyouts of the incumbent cable operator by the local telephone company, Congress has emphatically proclaimed its preference for facilities-based competition.

Indeed, it is Congress' will that all consumers not only have access to more than one provider, but also that they have access to more than one broadband wire. This multiple-wire world envisioned by Congress best promotes competition, as discussed supra, by

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[12/]See Telecommunications Act of 1996 at § 302.

[13/]These provisions add a new Section 652 to the existing Telecommunications Act. Under Section 652, no local exchange carrier may acquire more than a ten percent financial interest or any management interest in any cable operator providing cable service within the carrier's telephone service area. Similarly, no cable operator or affiliate may acquire more than a ten percent interest or any management interest in any local exchange carrier that provides telephone exchange service within the cable operator's franchise area. A local exchange carrier and cable operator in the same market may not enter into a joint venture or partnership to provide video programming directly to subscribers or to provide telecommunications services within that market. Joint ventures and partnerships for other purposes, including the construction of joint facilities to provide such services separately, are not barred.

wire world envisioned by Congress best promotes competition, as discussed supra, by maximizing consumer choice. In a world with access to at least two broadband wires, consumers can seamlessly switch between providers, or can customize their own mix of services offered by several providers simultaneously. In a world with only one wire to access, consumer choice is minimized, especially if the only choice is the one dictated by the landlord.

Indeed, the Commission has previously recognized that a "build, not buy" policy is the preferable method of broadband entry for telcos. In the Video Dialtone Order, the Commission stated as follows:

> Promoting competition in the modern video marketplace, encouraging diversity of program sources, and improving the nation's communications infrastructure are the primary objectives of our video dialtone policy. We are concerned that these public interest benefits would not be realized if our new policies encouraged telephone companies merely to acquire existing cable facilities rather than construct their own video dialtone systems. . . . The marketplace ultimately will determine the extent to which cable service providers and telephone companies will compete side-by-side. Based on the record and on our own substantial regulatory experience with the cable and telephone industries, however, we believe that adopting a "buy or build" policy in connection with video dialtone would dilute the incentives that telephone and cable companies have to compete directly. . . . Thus, in the interest of spurring competition and encouraging the development of new, diverse services to be delivered through the video dialtone platform, we will not permit telephone companies to purchase existing cable facilities in the companies' service areas for purposes of offering video dialtone services through those facilities.[14/]

[14/] In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781, ¶ 110 (1992).

In reaffirming this decision, the Commission again recognized that requiring telcos to build their own broadband networks where they wish to deliver video service is the most pro-competitive policy:

> We believe that retaining the ban in areas where facilities-based competition is viable will spur the development of competitive wire-based video delivery systems, thereby offering significant benefits to consumers. First, the added competition will likely provide a check on both cable and video dialtone rates. LECs that charge too much for video dialtone delivery services will face the risk that video programmers will forego video dialtone service and rely on cable systems for distribution of their product. To the extent that competition can provide a check on video dialtone rates, video programmers will be able to lower their rates to consumers. This, in turn, would constrain cable rates. Second, competition between cable operators and LECs would give both incentives to invest in infrastructure and develop new and innovative services to increase the attractiveness of their products to consumers. Third, the availability of additional distribution systems would offer increased channel capacity, thereby fostering greater diversity of programming options for consumers. Retaining the ban could also facilitate the development of competitive local telephone networks by cable operators.[15/]

It is apparent that these same policy goals led Congress to enact Section 302. The Commission must continue to recognize the benefits of two-wire competition in the future broadband market. Such benefits are no less relevant in MDUs than in any other context. To paraphrase, access to at least two broadband wires ensures, and will continue to ensure, that real competition (1) constrains rates, (2) creates incentives to develop infrastructure and new services, (3) results in increased channel capacity, (4) promotes new programming

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[15/] In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58 and Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244, ¶ 49 (1994).

options, and (5) facilitates the development of competing local exchange telephone networks. MDU residents should enjoy these same benefits, and therefore the Commission should retain the current MDU demarcation point for all broadband providers.

c. The "Joint Use" provision of the Telecommunications Act of 1996 expressly repudiates any proposal to alter the MDU broadband demarcation point.

In addition to the general policy embodied in Sec. 652 of the Communications Act, as added by Section 302 of the 1996 Telecommunications Act, in favor of facilities-based competition, in Sec. 652(d)(2) of the Act, Congress has expressly repudiated any suggestion that the point of demarcation in MDUs for broadband facilities be moved outside the end users' premises. Sec. 652(d)(2) provides as follows:

> (2) JOINT USE -- Notwithstanding subsection (c), a local exchange carrier may obtain, with the concurrence of the cable operator on the rates, terms, and conditions, the use of that part of the transmission facilities of a cable system extending from the last multi-user terminal to the premises of the end user, if such use is reasonably limited in scope and duration, as determined by the Commission.

As explained in detail above, in the MDU context, the portion of the broadband transmission facility "extending from the last multi-user terminal to the premises of the end user" is the homerun extending from the lockbox to the individual unit. Thus, it is evident from this language that Congress intended for MDU homeruns installed by the cable operator to remain under the control of the cable operator. The decision to allow a local exchange carrier to share the use of such homeruns lies within the sole discretion of the cable operator, and even then any such permission which the cable operator may choose to grant must be "reasonably limited in scope and duration." Moreover, by acknowledging that the facilities of the cable operator extend "to the premises of the end user," Congress has again reiterated

its intent, as originally set forth in the 1992 Cable Act, that the point of demarcation be located in close proximity to the actual customer's premises, i.e., the individual dwelling unit or office in an MDU building.

3. The existing demarcation point for broadband facilities in MDUs is a fair and workable approach.

The NPRM notes that some commenters have alleged that "the current cable demarcation point inhibits competition because either the 12-inch point is physically inaccessible (e.g., buried inside a concrete wall or metal conduit), or is practically inaccessible (e.g., where the building owner will not permit another wire to be strung through the hallways)."[16/] As a review of the record compiled by the Commission in MM Docket No. 92-260 will demonstrate, neither contention is factually correct.

a. The current broadband demarcation point for MDUs is generally readily accessible.

Time Warner has previously explained the difference between loop-through and homerun broadband distribution architecture in MDUs. With the homerun configuration, there are four general approaches to distribution wiring: (1) exterior -- where the wiring runs up the outside of the building and enters each unit through an outside wall or window sill; (2) hallway molding -- where the homeruns extend from the lockbox throughout the hallways in protective moldings installed by the cable operator and then enter each unit, e.g., above the doorway; (3) common closets -- where the wiring runs vertically through common closets on each floor, and then to the television sets located in each unit; and (4) internal conduit -- where the homeruns extend from the lockbox into conduits located within the walls

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[16/] NPRM at ¶ 9.